



15.6.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Romanian Senate on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Romanian Senate has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Bucharest, 4 May 2016

REASONED OPINION
of the Romanian Senate

on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

COM(2016) 128 final

The Romanian Senate:

I. Appreciates the steps taken by the European Commission to combat unfair practices, guarantee a decent standard of living, increased social protection and higher wages for European Union workers and promote the principle that ‘the same work at the same place should be remunerated in the same manner’.

II. Considers that,

a. The proposal is in breach of Article 2 of Protocol No 2 annexed to the Lisbon Treaty on the application of the subsidiarity and proportionality principles. Prior to proposing a legislative act, the Commission has to carry out extensive consultations, including an analysis of the regional and local dimension of the intended measures. The following shortcomings have been highlighted by several Member States: the absence of a social impact assessment analysing possible job losses and elimination of service providers on the various labour markets; the need to clarify the impact on SMEs and reflect the interests of all stakeholders; the lack of data on the number of workers posted for over 24 months. This means that the Commission proposal to amend Directive 96/71/EC could lead to inadequate law-making which may affect the process of posting workers in the EU and hence the freedom to provide services and labour mobility.

b. The proposal is in breach of Article 5 of Protocol No 2 annexed to the Lisbon Treaty, pursuant to which any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. That statement should also contain an assessment of the proposal from the point of view of its financial impact. Moreover, the drafting of legislative acts has to take account of the need to minimise any financial or administrative burden falling upon the Union, national governments, regional or local authorities, economic operators or citizens. The Commission's impact assessment does not contain a rigorous analysis of the proposal's financial implications for the EU internal market, including companies that post workers and the beneficiaries of the services concerned. Thus the Commission has failed to show that the administrative burden imposed by the draft directive is proportionate to the objective being pursued.

c. Even though the amendments are formally based on Articles 56 and 59 TFEU, which seek to remove restrictions on freedom to provide services within the Union enjoyed by the nationals of one Member State who are established in another, the proposal itself aims to increase the level of protection provided for posted workers, which means that there is a

discrepancy between the legal basis of the proposal and the intention behind the proposed measures.

d. Directive 2014/67/EU on the enforcement of Directive 96/71/EC has already provided for new and strengthened instruments to fight and sanction circumventions, fraud and abuse, increasing the Member States' ability to monitor working conditions and enforce the rules applicable. Accordingly, and bearing in mind the need to avoid possible overregulation, the proposal to amend Directive 96/71/EC is premature and should be postponed to the period after the deadline for the transposition of the directive on the enforcement of Directive 96/71/EC has passed and its effects have been carefully evaluated and assessed.

III. On account of the above, the Senate considers that the proposal fails to respect the principles of subsidiarity and proportionality.

pp The President of the Senate
Ioan CHELARU